

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

\_\_\_\_\_  
JOHN KOGUT,

Plaintiff,

-against-

THE COUNTY OF NASSAU, POLICE  
COMMISSIONER DONALD KANE, POLICE  
COMMISSIONER WILLIAM J. WILLETT (2005),  
POLICE COMMISSIONER JAMES LAWRENCE,  
DETECTIVE SEAN SPILLANE (HEAD OF HOMICIDE  
1985), DETECTIVE DENNIS FARRELL (HEAD OF  
HOMICIDE 2005), CAROLANN HESSEMAN, AS  
EXECUTRIX FOR THE ESTATE OF JOSEPH VOLPE,  
DETECTIVE ROBERT DEMPSEY, DETECTIVE  
ALBERT MARTINO, DETECTIVE WAYNE  
BIRDSALL, DETECTIVE MILTON G. GRUBER,  
DETECTIVE CHARLES FRAAS, DETECTIVE FRANK  
SIRIANNI, DETECTIVE HARRY WALTMAN, P.O.  
MICHAEL CONNAUGHTON, P.O. WILLIAM DIEHL,  
and JOHN DOES 1-5,

Defendants.

06-CV-6695 (JS)(WDW)

\_\_\_\_\_  
JOHN RESTIVO, DENNIS HALSTEAD, MELISSA  
LULLO, JASON HALSTEAD, TAYLOR HALSTEAD,  
and HEATHER HALSTEAD,

Plaintiffs,

-against-

NASSAU COUNTY, CAROLANN HESSEMAN, AS  
EXECUTRIX FOR THE ESTATE OF JOSEPH VOLPE,  
in his individual capacity, ROBERT DEMPSEY,  
in his individual capacity, FRANK SIRIANNI,  
in his individual capacity, MILTON GRUBER,  
in his individual capacity, HARRY WALTMAN  
in his individual capacity ALBERT MARTINO,  
in his individual capacity, CHARLIE FRAAS,  
in his individual capacity, THOMAS ALLAN  
in his individual capacity, RICHARD BRUSA,  
in his individual capacity, VINCENT DONNELLY,  
in his individual capacity, MICHAEL

06-CV-6720(JS)(WDW)

Defendants.

Pursuant to 28 U.S.C. § 1746, I, Deborah L. Cornwall, hereby declare under penalty of perjury that the following facts are true, to the best of my knowledge and belief:

5. In numbering exhibits offered in opposition to summary judgment, we have used deposition exhibit numbers where possible, but not every deposition exhibit is offered here. The last deposition exhibit number was plaintiffs' exhibit ("PX") 326. To reduce confusion, rather than offering the Court consecutively numbered exhibits which may or may not be consistent with deposition exhibit numbers, we have created new numbers for any exhibit that was not marked at a deposition, starting at PX 330.
6. Attached as PX1 is a true and correct copy of an undated NCPD Scientific Investigation Bureau Report of Det. Charles C. Fraas, produced by defendants in discovery.
7. Attached as PX15 is a true and correct copy of a 4/19/85 NCPD Form 79 (Physical Condition of Defendant Questionnaire) for Kenneth Cockerel, produced by defendants in discovery.
8. Attached as PX56 is a true and correct copy of the Nassau County Medical Examiner's Autopsy Report for Theresa Fusco, produced by defendants in discovery.
9. Attached as PX62 is a true and correct copy of an excerpt of the missing persons report for Theresa Fusco prepared by NCPD Det. G. Doherty, produced by defendants in discovery.
10. Attached as PX69 is a true and correct copy of a Stipulation to Vacate from *People v Restivo & Halstead* and *People v. Kogut*.
11. Attached as PX70 is a true and correct copy of the 5/2/03 Affirmation of Peter Weinstein Consenting to Vacatur of Defendants' Judgments of Conviction.
12. Attached as PX71 is a true and correct copy of the transcript of the proceedings dismissing the indictment in *People v. Restivo & Halstead*, Ind. No. 61322-85, on 12/29/05.
13. Attached as PX96 is a true and correct copy of defendant Michael Connaughton's handwritten notes of his 4/2/86 interview of Steven Dorfman, as produced by defendants in discovery.
14. Attached as PX97 is a true and correct typed copy of the 4/2/86 interview and 6/25/86 statement of Steven Dorfman, as produced by defendants in discovery.
15. Attached as PX98 is a true and correct copy of the 6/25/86 statement of Steven Dorfman handwritten by defendant Volpe, as produced by defendants in discovery.
16. Attached as PX100 is a true and correct copy of plea minutes of Steven Dorfman in *People v. Dorfman*, Ind. No. 63090/86.

17. Attached as PX114 is a true and correct copy of the 4/11/85 Affirmation of Theodore Robinson in Support of Petition for Article 78 Relief for John Restivo and Dennis Halstead, filed in connection with the underlying criminal proceedings and produced by defendants in discovery. We respectfully request that the Court take judicial notice of this filing as an adjudicative fact pursuant to Federal Rule of Evidence 201.
18. Attached as PX115 is a true and correct copy of a 3/28/85 Letter from NCPD Police Commissioner Samuel J. Rozzi to Theodore Robinson regarding Mr. Robinson's 3/19/85 letter of complaint about the abusive interrogation of John Restivo, produced by defendants in discovery.
19. Attached as PX134 is a true and correct copy of excerpts of NCPD Homicide Bureau Blotter Entries for 3/5/85, 3/6/85, 3/25/85 & 3/26/85, produced by defendants in discovery.
20. Attached as PX135 is a true and correct copy of the NCPD Miranda Policy as of 2/15/84, as produced by defendants in discovery.
21. Attached as PX141 is a true and correct copy of defendant Waltman's handwritten notes of his 9/12/85 interview with Brian O'Hanlon, produced by defendants in discovery.
22. Attached as PX143 is a true and correct copy of the 9/12/1985 Statement of Brian O'Hanlon, handwritten by Det. H. Waltman, as produced by defendants in discovery.
23. Attached as PX144 is a true and correct copy of the 9/12/1985 Statement of Brian O'Hanlon to Dets. Waltman and Lane, typed, as produced by defendants in discovery.
24. Attached as PX158 is a true and correct copy of a 12/9/84 NCPD Homicide Lead Sheet regarding a call Detective Volpe took from Debra Smith, as produced by defendants in discovery.
25. Attached as PX159 is a true and correct copy of a 12/9/84 Statement of Debra Smith, Handwritten by Det. Pierce, as produced by defendants in discovery.
26. Attached as PX160 is a true and correct copy of Det. Mitchell's notes of a telephone call from Debbie Smith, produced by defendants in discovery.
27. Attached as PX161 is a true and correct copy of 12/6/84 handwritten notes by Det. Mitchell regarding his interview of John French, as produced by defendants in discovery.
28. Attached as PX162 is a true and correct copy of a 12/11/84 list of items lost from John French's Car, handwritten by Det. Mitchell, as produced by defendants in discovery.
29. Attached as PX163 is a true and correct copy of a 12/8/84 Statement of John French handwritten by Det. Sirianni, as produced by defendants in discovery.

30. Attached as PX165 is a true and correct copy of a NCPD Latent Fingerprint Unit Vehicle Processing Worksheet and related documents relating to the processing of the French car, as produced by defendants in discovery.
31. Attached as PX166 is a true and correct copy of a 11/10/84 Lynbrook Police Report of John French's stolen vehicle and 11/18/84 Report of vehicle recovery, as produced by defendants in discovery.
32. Attached as PX168 is a true and correct copy of the NCPD Missing Person Poster for Theresa Fusco, produced by defendants in discovery.
33. Attached as PX169 are true and correct copies of NCPD photographs of the John French Car (at pp. 1-4 & 9), as produced by defendants in discovery.
34. Attached as PX170-A is a true and correct copy of a Mapquest map noting reported locations of information provided by John French and Debra Smith in reference to Hot Skates and Theresa Fusco's home, with handwritten markings made at deposition.
35. Attached as PX184 is a true and correct copy of a 11/27/85 NCPD Lt. Sean Spillane letter recommending that Det. Volpe, P.O. Connaughton and P.O. Diehl receive a commendation for their work in the Fusco investigation, as produced by defendants in discovery.
36. Attached as PX185 is a copy of PX 184, retyped for legibility given the poor quality of that PX as produced by defendants in discovery.
37. Attached as PX192 is a true and correct copy of a 3/5/85 NCPD Form 79, Physical Condition of Defendant Questionnaire for Harold Smyle, as produced by defendants in discovery.
38. Attached as PX195 is a true and correct copy of a 3/7/85 Statement of Harold Smyle handwritten by Det. Sirianni, as produced by defendants in discovery.
39. Attached as PX198 is a true and correct copy of a 3/27/85 Statement of Harold Smyle handwritten by Det. Perrino, as produced by defendants in discovery.
40. Attached as PX199 is a true and correct copy of 3/27/85 typed statement of Harold Smyle, produced by defendants in discovery.
41. Attached as PX208 is a true and correct copy of a 6/10/85 Statement of Kenneth Cockerel, handwritten by defendant Sirianni and produced by defendants in discovery.
42. Attached as PX209 is a true and correct copy of 4/19/85 Statement of Kenneth Cockerel, handwritten by defendant Allen and produced by defendants in discovery.

43. Attached as PX210 is a true and correct copy of the transcript of Kenneth Cockerel's testimony on 6/10/85 before the Restivo/Halstead Grand Jury, produced by defendants in discovery. The exhibit reflects that Mr. Cockerel testified twice: first at pages 3-45, and then in a second session at pages 67-79.
44. Attached as PX211 is a true and correct copy of the transcript of Michael Cockerel's testimony on 6/17/85 before the Restivo/Halstead Grand Jury, produced by defendants in discovery.
45. Attached as PX213 is a true and correct copy of the 3/18/03 Affidavit of David Rapp.
46. Attached as PX227 is a true and correct copy of a collection of documents relating to the Robert Moore case, as marked by counsel for plaintiff John Kogut at deposition.
47. Attached as PX231 is a true and correct copy of a page from the ADA's progress notes in *People v. Steven Dorfman*, produced by defendants in discovery.
48. Attached as PX243A is a true and correct copy of Chau Lam, "False Confessions," *Newsday* 4/11/05, as offered at depositions in this action.
49. Attached as PX247 is a true and correct copy of a 3/10/95 Interdepartmental Memorandum from NCDA Appeals Chief Peter Weinstein and Deputy Chief Bruce Whitney to DA Denis Dillon re: Theresa Fusco homicide, produced by defendants in discovery pursuant to court order overruling claims of privilege, *see* D.E. 145 (granting plaintiffs' motion to compel, D.E. 111), D.E. 158 (denying defendants' motion for reconsideration).
50. Attached as PX250 is a true and correct copy of the Statement of Anibal Martinez, handwritten by the NCPD in Spanish, produced by plaintiff John Kogut in discovery.
51. Attached as PX251 is a true and correct copy of a collection of documents from the NCPD investigation of Anibal Martinez, Jarreu Carter Statements, dismissal transcript, news articles, produced by plaintiff John Kogut in discovery.
52. Attached as PX253 is a true and correct copy of the Complaint in *Martinez v Nassau County, et al.*, No. 02 Civ. 4985 (JS)(WDW), as produced by plaintiff John Kogut in discovery.
53. Attached as PX254 is a true and correct copy of the Statement of Anibal Martinez, PX250, translated into English by NCPD Det. Trujillo, as produced by plaintiff John Kogut in discovery.
54. Attached as PX266 is a true and correct copy of the Lynbrook Police Blotter 11/10/84 (2345 entry) regarding John French's report that his car had been stolen, produced by the Lynbrook Police Department in response to a subpoena in this action.

55. Attached as PX278 is a true and correct copy of the 2/25/11 Declaration of Carl Pozzini attached to which are Exhibit A, true and correct copy of a June 10 statement defendant Volpe handwrote for Mr. Pozzini, and Exhibit B, a true and correct copy of Mr. Pozzini's testimony from the Restivo/Halstead trial.
56. Attached as PX296 is a true and correct copy of the 4/25/11 Declaration of Theodore Robinson, Esq., regarding his representation of plaintiff John Restivo in the underlying criminal proceedings.
57. Attached as PX299 is a true and correct copy of various documents regarding investigation, indictment, prosecution, dismissal, civil suit and verdict in *Shonnard Lee v. Nassau County, et al.*, No. 00 Civ. 0881 (WDW), as produced by plaintiff John Kogut in discovery.
58. Attached as PX300 is a true and correct copy of the article, Chau Lam, "2M in faulty arrest," *Newsday* 5/19/04.
59. Attached as PX302 is a true and correct copy of a 3/10/00 NCPD Detective Division Supplementary Report by Det. Dempsey regarding the homicide of Sammy Jones, pp. 1-5, as produced by plaintiff John Kogut in discovery.
60. Attached as PX303 is a true and correct copy of a Crime Stoppers Flyer regarding the Sammy Jones homicide, as produced by plaintiff John Kogut in discovery.
61. Attached as PX304 is a true and correct copy of a 2/24/97 Statement of Henrietta Williams, handwritten by Det. Dempsey, as produced by plaintiff John Kogut in discovery.
62. Attached as PX330 is a true and correct copy of excerpts of the 1/22/09 deposition of defendant Thomas J. Allen in this action.
63. Attached as PX331 is a true and correct copy of excerpts of the 1/29/09 deposition of defendant Michael P. Connaughton in this action.
64. Attached as PX332 is a true and correct copy of excerpts of the 2/13/09 deposition of defendant Robert Dempsey in this action.
65. Attached as PX333 is a true and correct copy of excerpts of the 5/18/10 and 1/24/12 deposition of defendant Robert Dempsey in this action.
66. Attached as PX334 is a true and correct copy of excerpts of the 1/26/09 deposition of former NCPD Homicide Commander, Lt. Dennis W. Farrell, in this action.
67. Attached as PX335 is a true and correct copy of excerpts of the 4/29/11 deposition of John French in this action.



68. Attached as PX336 is a true and correct copy of excerpts of the 3/16/11 deposition of Lori French Gabberty in this action.
69. Attached as PX337 is a true and correct copy of excerpts of the 3/29/12 deposition of NCPD Det. Robert Hillman in this action.
70. Attached as PX338 is a true and correct copy of excerpts of the 8/23/10, 9/1/10, 9/8/10 and 4/3/12 deposition of trial prosecutor and former NCDA Assistant District Attorney Fred Klein, Esq., in this action.
71. Attached as PX339 is a true and correct copy of excerpts of the 12/20/10 deposition of former NCDA Assistant District Attorney, now Judge, Edward W. McCarty, III, in this action.
72. Attached as PX340 is a true and correct copy of excerpts of the 12/16/11 deposition of Brian O'Hanlon in this action.
73. Attached as PX341 is a true and correct copy of excerpts of the 1/18/11 and 2/28/11 deposition of former NCPD Det. Michael O'Leary in this action.
74. Attached as PX342 is a true and correct copy of excerpts of the 1/4/12 deposition of Carl Pozzini in this action.
75. Attached as PX343 is a true and correct copy of excerpts of the 8/2/10 deposition of David Rapp in this action, which was conducted in Kansas City, Missouri.
76. Attached as PX344 is a true and correct copy of excerpts of the 6/13/11 and 6/14/11 deposition of plaintiff John Restivo in this action.
77. Attached as PX345 is a true and correct copy of excerpts of the 6/15/10, 12/13/11 and 12/14/11 deposition of defendant Frank Sirianni in this action.
78. Attached as PX 346 is a true and correct copy of excerpts of the 1/5/12 deposition of Harold Smyle in this action.
79. Attached as PX347 is a true and correct copy of excerpts of the 2/9/09 and 4/21/10 deposition of defendant and former Homicide Commanding Officer, Lt. Sean Spillane, in this action.
80. Attached as PX348 is a true and correct copy of excerpts of the 1/26/09, 3/5/09, 3/18/09, 4/6/09, 5/4/09, 11/24/09 videotaped deposition of defendant Joseph Volpe in this action.
81. Attached as PX349 is a true and correct copy of excerpts of the 12/2/09 and 11/19/10 continued videotaped deposition of defendant Joseph Volpe in this action.



82. Attached as PX350 is a true and correct copy of excerpts of the 2/10/11 deposition of former NCDA Appeals Bureau Chief and Assistant District Attorney Peter Weinstein, Esq. in this action.
83. Attached as PX351 is a true and correct copy of excerpts of the 1/13/12 continued deposition of Peter Weinstein in this action.
84. Attached as PX352 is a true and correct copy of the Restivo & Halstead Plaintiffs' Fourth Set of Requests to Admit, deemed admitted pursuant to a motion to compel. *See* D.E. 173 (granting motion to deem admitted, D.E. 168).
85. Attached as PX353 is a true and correct copy of the report of plaintiffs' police practices expert Russell Fischer.
86. Attached as PX354 is a true and correct copy of a Google map depicting pertinent locations in Lynbrook.
87. Attached as PX355 is a true and correct copy of a 12/8/84 NCPD Crime Scene Unit Scene Examination Report produced by defendants in discovery.
88. Attached as PX356 is a true and correct copy of a redacted excerpt of a 2001 Supplementary Report of NCPD Det. Robert Hillman produced by defendants in discovery pursuant to court order overruling a claim of privilege, *see* D.E. 146 (denying motion to quash, D.E. 114).
89. Attached as PX357 is a true and correct copy of the 11/25/94 NCPD Supplementary Report of defendant Volpe, produced by defendants in discovery.
90. Attached as PX358 is a true and correct copy of the 4/25/85 Affirmation of Theodore Robinson in Reply to Article 78 petition on behalf of plaintiffs John Restivo and Dennis Halstead in connection with the underlying criminal proceedings and produced by defendants in discovery.
91. Attached as PX359 is a true and correct copy of the transcript of the 12/23/05 acquittal decision of the Hon. Victor Ort, *People v. Kogut*, Ind. No. 61029/85.
92. Attached as PX360 is a true and correct copy of the 7/13/10 declaration of Harold Smyle in this action.
93. Attached as PX361 is a true and correct copy of a NCPD Polygraph Examination card for Harold Smyle.
94. Attached as PX362 is a true and correct copy of a criminal Information and Indictment, *People v. Steven Dorfman*, Ind. No. 63090/86.

95. Filed under seal separately as PX363 is a true and correct copy of Brian O'Hanlon's New York State Division of Criminal Justice Services Repository Inquiry Record, produced by defendants in discovery.
96. Attached as PX364 is a true and correct copy of a 1/29/86 Nassau County Correctional Center ("NCCC") Administrative Segregation Report for Samuel Newsome.
97. Attached as PX365 is a true and correct copy of a 3/3/86 NCCC sign-in form for Samuel Newsome reflecting a visit by Det. Pizer.
98. Attached as PX366 is a true and correct copy of handwritten notes by NCPD Det. Pizer regarding an interview with Samuel Newsome, produced by defendants in discovery.
99. Attached as PX367 is a true and correct copy of the 10/22/86 statement of Samuel Newsome, handwritten by defendant Connaughton, produced by defendants in discovery.
100. Attached as PX368 is a true and correct copy of the statement of Shonnard Lee handwritten by defendant Robert Dempsey and produced by plaintiff John Kogut in discovery.
101. Attached as PX369 is a true and correct copy of Al Baker, "Teen Held in Death," *Newsday*, 6/19/97.
102. Attached as PX370 is a true and correct copy of the 6/13/97 statement of Tajuan Crum handwritten by defendant Dempsey and produced by plaintiff John Kogut in this action.
103. Attached as PX371 is a true and correct copy of the Affidavit of Tajuan Crum, *Shonnard Lee v. Nassau County, et al.*, No. 00 Civ. 0881 (WDW), produced by plaintiff John Kogut in this action.
104. Attached as PX372 is a true and correct copy of the Affidavit of Winona Hammonds, *Shonnard Lee v. Nassau County, et al.*, No. 00 Civ. 0881 (WDW), produced by plaintiff John Kogut in this action.
105. Attached as PX373 is a true and correct copy of the Statement of Ragan Martin, *Shonnard Lee v. Nassau County, et al.*, No. 00 Civ. 0881 (WDW), produced by plaintiff John Kogut in this action.
106. Attached as PX375 is a true and correct copy of excerpts of deposition of Shonnard Lee, *Shonnard Lee v. Nassau County, et al.*, No. 00 Civ. 0881 (WDW), produced by plaintiff John Kogut in this action.
107. Attached as PX376 is a true and correct copy of the statement of Robert Moore handwritten by defendant Volpe, produced by plaintiff John Kogut in this action.

108. Attached as PX377 is a true and correct copy of the Affidavit of Robert Moore, *Robert Moore v. Nassau County*, No. 00 Civ. 881 (JS)(WDW), produced by plaintiff John Kogut in this action.
109. Attached as PX378 is a true and correct copy of excerpts of deposition of Robert Moore, *Moore v. Nassau County*, No. 00 Civ. 881 (JS)(WDW), produced by plaintiff John Kogut in this action.
110. Attached as PX379 is a true and correct copy of excerpts of the deposition of NCPD Det. Jerl Mullen, *Moore v. Nassau County*, No. 00 Civ. 881 (JS)(WDW), produced by plaintiff John Kogut in this action.
111. Attached as PX380 is a true and correct copy of excerpts of the deposition of Joseph Volpe, *Moore v. Nassau County*, No. 00 Civ. 881 (JS)(WDW), produced by plaintiff John Kogut in this action.
112. Attached as PX381 is a true and correct copy of NCPD training classes as produced by defendants in discovery.
113. Attached as PX382 is a true and correct copy of Defendants' Amended Response to Plaintiffs' Seventh Set of Interrogatories served pursuant to court order granting a motion to compel, *see* D.E. 179 (granting D.E. 174).
114. Attached as PX383 is the NCPD Comprehensive Officer Report for defendant Volpe.
115. Attached as PX384 are true and correct copies of excerpts of the 1986 trial in *People v. Restivo & Halstead*, Ind. No. 61322-85.
116. Attached as PX385 are true and correct copies of handwritten notes of defendant Dempsey documenting Theodore Robinson's 3/7/85 telephone complaint, produced by defendants in discovery.
117. Attached as PX386 are true and correct copies of excerpts of the 2005 retrial in *People v. Kogut*, Ind. No. 61029/85.
118. Attached as PX387 is a true and correct copy of the declaration of plaintiffs' DNA expert Charlotte Word.
119. Attached as PX388 is a true and correct copy of an Affidavit of Shonnard Lee in *Shonnard Lee v. Nassau County, et al.*, No. 00 Civ. 0881 (WDW), produced by plaintiff John Kogut in this action.

120. Attached as PX389 is a true and correct copy of an Affidavit of Dorothy Lee in *Shonnard Lee v. Nassau County, et al.*, No. 00 Civ. 0881 (WDW), produced by plaintiff John Kogut in this action.
121. Attached as PX390 is a true and correct copy of an Affidavit of Jeffrey Bourne in *Shonnard Lee v. Nassau County, et al.*, No. 00 Civ. 0881 (WDW), produced by plaintiff John Kogut in this action.
122. Attached as PX391 is a true and correct copy of an Affidavit of Ragan Martin in *Shonnard Lee v. Nassau County, et al.*, No. 00 Civ. 0881 (WDW), produced by plaintiff John Kogut in this action.
123. Attached as PX392 is a true and correct copy of the Comprehensive Officer History for defendant Dempsey, produced by defendants in discovery.

I declare under penalty of perjury that the foregoing is true to the best of my knowledge and belief.

Dated: July 2, 2012  
New York, NY

/s/ Deborah L. Cornwall  
Deborah L. Cornwall

**Certificate of Service**

I hereby certify that a true and accurate copy of the Declaration of Deborah L. Cornwall was served by ECF and UPS on July 2, 2012, upon the following:

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/s/ Sophie Glickstein  
Sophie Glickstein  
Paralegal